

The doctrine of piercing the veil and its application in Czech corporate law

The theses concerns with the doctrine of piercing the veil and its application in Czech corporate law. Firstly, the crucial term of the separateness of assets is described as a characteristic feature of a legal subject under Czech law, followed with explanation of the concept of the shareholders' guarantee in the Czech law based on the fact that all companies are legal persons with the asset separateness, even though their function is similar to the partnership. The doctrine of piercing the veil was developed by judiciary decisions dealing with different situations and circumstances, under which the legal separateness of a corporation and separateness of assets are misused by shareholders and creditors (voluntary or involuntary) are harmed. The main question asked is whether in specific cases of "corporate form abuse" law can find a way to reimburse directly the harmed creditors or the company. Based on the description of development of judiciary in the United States, Great Britain and Germany and its conclusions, specific factors for application the doctrine were researched, such as alter ego, instrumentality, undercapitalization, agency, commingling of funds etc. These factors are used differently by courts and can be analyzed only in connection. The doctrine is also developed in Germany, where specific provisions of tort law are used in order to solve the "problem of piercing". Based on this research, different statutory provisions of the Czech corporation law are analyzed in order to determine whether the doctrine of piercing the veil can be applied and in which form. There are some specific factors as guarantee of shareholders, commingling of funds, undercapitalization, interventions, and specific attention is paid to the new regulation of business groups in the Act on Business Corporations, first of all "influencing" with its special regulation of a civil wrong. The Act embodies an obligation of a member to reimburse the influenced person under special circumstances and construes a guarantee of a member to creditors of the company. Very controversial is another provision concerning an obligation of a member to turn away a threatening insolvency with a possibility of his guarantee. Finally, general provisions of tort law are discussed briefly.